1945.

File No. O Boroughs/45

Legal **DEPARTMENT**
"A" **BRANCH**

Subject:—

Opinions under the Bombay Municipal Boroughs Act, 1925.

(P) 39/(-5-)

File No. O Boroughs/45

Std. Sectt. Slip 24 B e.

159-A

Contents.

Legal Department -- Vol. No. O. Boroughs/1945

....

S. No.	Compilation No.	Subject.	Pages.
	O. Boroughs/1945.	Opinions under the Bombay Municipal Boroughs Act, 1925.	
1.	O.No.1149/7-2-45	Re: Levy of taxes by the Municipalities under the Bombay District Municipal Act, 1901. Levy of Extra Wheel tax for the purpose of payment of dearness allowance to the municipal employees.	1-2
2.	R.I. No.963/31-1-45 O.No.1327/14-2-45	Re: Dismissal of a suit by Second Class Sub-Judge filed by the Administrator of a Municipality for the recovery of gratuity paid to Ex-Chief Officer who was discharged from municipal service as a measure of retrenchment. Question- Whether the Administrator should file an appeal against the decision of the Sub-Judge. Sec.58(h) of the Bombay Municipal Boroughs Act, 1925.	3-8
3.	R.I.NO.5277/ 25-6-45 O. No. 6036/14-8-45	Re: - do - Question- Whether the interpretation of Sec. 58(h) of the Bombay Municipal Boroughs Act given by the Sub-Judge while dimissing the suit as mentioned at S. No. 2 above is correct.	9-10 11-12
4.	R.I.No.1585/ 20-2-45. O. No. 2255/ 22-3-45.	Re: Disqualification of a Municipal Councillor as he absented from the meetings. Request from the Councillor to grant him leave with retrospective effect. Question - Whether the Municipality can grant leave with retrospective effect.	13-16
5.	R.I.No.2958/ 6-4-45. O. No.3407/ 1-5-45	Re: Challenge regarding the legality of the Govt. order issued under sub-section (1) of section 219 of the Bombay Municipal Boroughs Act, 1925 superseding the Ahmedabad Municipality for a period of three years, on the grounds that no opportunity was given to the Municipality to render explanation within the meaning of Sec. 219(1) of the Act.	17-18
6.	R.I.NO.3078/ 10-4-45 O.No.3437/2-5-45	Question - Whether the view taken by the O.D. that the Administrator of a Municipality can delegate his powers to the Chief Officer in virtue of the powers vested in him by clause (d) of Sec. 219(2) of the Bombay Municipal Boroughs Act, 1925, and that it is not necessary to frame a rule for that purpose under sec. 58(1) read with sec. 46 of the said Act, is correct.	19-20

7.	R.I.No.4774/ 6-6-45 O. No. 4639/ 20-6-45.	Re: Action against the President of the Municipality under sec. 23(1) of the Bombay Distt. Municipal Act, 1901, whose term of office expired and who did not call a meeting to elect a new President as there is no similar provision in the Bombay Municipal Boroughs Act, 1925. (Pl. see. R.L.A.'s No.7327/20-8-41) 21-24
8.	R.I.No.3671/ 26-4-45. O.No.4607/ 20-6-45.	Re: Hubli Electricity Ltd. Taking over charge of by the Govt. Question regarding the payment of municipal taxes in respect of the company that have accrued for the period since Govt. took over certain buildings in the Power House compound. 25-28
9.	R.I.No.6121/ 20-7-45. O.No. 5619/ 30-7-45	Re: Assessment of general and special water rates by the Ahmedabad Municipality in respect of R.C. Technical Institute. Issue of a Public Notice under sec.80 of the B.M.B.Act, 1925 and a special notice No. 249 under sec. 81 of the said Act to the Institute by the Chief Officer, fixing the valuation of the Institute under R. 244(5) of the Ahmedabad Municipal Rules. Objection petition to the Administrator filed by the Institute against the valuation. Rejection of the petition by the Appellate Committee of the Municipality. Question - Whether a suit can be filed in the Civil Court against the decision of the committee. 29-30
10.	O.No.5666/ 30-7-45	Re: Filling up of a vacancy of the President of a Municipality where term of office has expired. Procedure to be followed in respect thereof. 31-34
11.	R.I.no.6447/ 31-7-45. O. No. 6379/ 28-8-45.	Re: Issue of orders by R.D. regarding introduction of bill system for recovery of non-agricultural assessment in Surat city, by the appointment of one clerk and one peon. Request to R.L.A. to examine these orders with references to R.L.A.'s No. 4690 dated 15-5-1940. 35-36
12.	R.I.No.5581/ 4-7-45. O.No.6433/ 30-8-45.	Re: Assessment of house tax on Govt. buildings. Question - Whether the claim of the Poona Municipality for payment of the house tax in respect of "Western Bungalow" at Bhanburda though for a period of more than six years should be accepted. 37-40
13.	O.No.5995/ 13-8-45.	Questions 1) Whether Act XVII of 1944 validating the acts done by the Chief Officer and otherofficers of the Municipality during the period of supersession of the Municipality under rule 38-B of the Defence of India Rules was legally enacted. 2) Whether the supersession of the Municipality under Sec. 219 of the Bombay Municipal Boroughs Act was

13 ..		illegal by reason of the failure on the part of Govt. to give the Municipality an opportunity to render an explanation as required by Sec. 219(1) of the B.M.B. Act. 3) Whether the appointment of the Committee of Management and of Diwan Bahadur Maulvi as its Chairman is valid. 4) Whether Chairman's appointment on payment is legal, 5) Whether his powers under delegated authority to sign vakalatnamas is valid, and 6) Whether the Committee of Management can delegate its powers to an individual or a committee or a sub-committee under Sec. 219(8)(b).	41-46
14.	R.I.No.3144/ 11-4-45 O.No. 3283/ 26-4-45 R.I.No.6099/ 19-7-45. O.No. 6936/21-9-45	Re: Water tax. Levy by the Municipality on the basis of the Number and size of the pipe connections in respect of Metal and Civil Hospital, Dharwar. Question- Whether the claim of the Dharwar Municipality is valid.	47-66
15.	R.I.No.7591/ 3-9-45 O.No. 7173/ 28-9-45.	Question whether the meeting for the election of the new President and Vice-President of the Sholapur Municipality after the life of the said body is extended under sec.25 of the B.M.B. Act, 1925, will have to be called for by the outgoing President under sec. 35 of the said Act.	67-68
16.	R.I.No.7176/ 21-8-45 O.No. 7613/ 15-10-45	Question as to who should bear initial as well as maintenance charges of traffic islands and electric signals that are erected in various places for the better control of traffic.	69-72
17.	R.I.No.8581/ 3-10-45 O.No.8290/ 8-11-45.	Question whether Govt. can legally have any claim over the profits made by the Municipalities and local boards in running 'fair price shops' which were started on the encouragment from Govt. either by way of loan, or by supply of the goods and commission.	73-76
18.	R.I.No.9627/ 1-11-45 O.No. 8498/ 14-11-45.	Question whether the vacancies of Councillors caused by the withdrawal of the candidatures by some of the candidates on the eve of the election, can be filled in by Govt. by nomination under sec. 9(2) of the B.M.B. Act, 1925.	77-80
19.	O.No.9312/ 11-12-45	Re: Proposal to introduce the subsidised Milk distribution scheme in the Poona Rationed Area. Question regarding making appointment in connection with the subsidised Milk Scheme.	81-82
20.	O.No.9688/ 28-12-45	Re: Levy of a general rate on buildings and lands by the Sholapur Municipality Question whether the view taken by the Consulting Surveyor that the levy of a rate on the basis of area is not legal, is correct.	83-88

21.	O.No.9691/ 28-12-45.	Question whether the Lease/Land vehicle passing through any municipal limits would be exempt from the levy of octroi.

89-90

Office of the R.L.A.

Section 59 of the Bombay District Municipal Act, 1901, provides that subject to any general or special orders which the Provincial Government may make in this behalf any municipality may impose for the purposes of the Act any of the taxes mentioned therein. By G.R.(G.D.) No.860, dated 23-1-1920 as subsequently modified by G.R.No.6863, dated 7-6-1921 Government has passed a general order directing that the balance remaining out of the income accruing in a year from the levy of wheel tax and road tolls by municipalities must be expended on the construction (which includes road widening and set-backs) as well as maintenance of roads and should be invariably credited to a special fund for expenditure on roads only. Although the order makes no express mention of section 59 of the Bombay District Municipal Act 1901, it is obviously one passed thereunder and the omission does not affect its validity. That order is applicable to all municipalities governed by the Bombay District Municipal Act as well as to those governed by the Bombay Municipal Boroughs Act, 1925 (See section 73 read with proviso (b) to section 5(1) of the Bombay Municipal Boroughs Act). Consequently the Government Order of 1920 as amended by the Government Order of 1921 would unless relaxed be binding on the Nadiad Borough Municipality. It is however open to Government in modification of that Order to pass an Order under section 73 of the Bombay Municipal Boroughs Act that the extra levy of wheel tax by the Nadiad Municipality should be applied to the payment of dearness allowance of the municipal employees and the balance if any should be devoted for the construction and maintenance of roads. On passing such order the objection raised by the Commissioner would be fully met and the application of the extra levy to payment of dearness allowance would be lawful.

2. The alleged kabulnyat at page 19 ante is not in the nature of an agreement prohibiting the municipality

from increasing the levy at any time if required. All that it means is that some of the rate payers who would be affected by the levy have withdrawn their objection, which they would otherwise have done under clause (c) of section 75, on the understanding that the increase would not be in excess of 50 p.c. Consequently it would be open to the municipality to propose in future any further increase in the levy; but the rate payers would be justified in raising objections under clause (c) of section 75 whenever the municipality proposes to increase the levy by more than 50 p.c. or does not lower the tax on the stoppage of dearness allowance. In the circumstance the course proposed by G.O. in para, 3 of its note of ~~file~~ 13-1-1945 would appear to be free from legal objection.

Sd/-P.N.M.
6/2/45
Remembrancer of Legal Affairs.

U.R. to G.O. No. 1149 dated the 7th February 1945.

B.L.C. 14/5/ 45.

L.D.R.I.No.963 / 31-1-45.

Submitted with reference to the G.D.Note at pp.13-14 ante.

2. The suit filed by the Administrator, Pandharpur Municipality for the recovery of gratuity paid to Mr. V.B.Yadgiri, Ex-Chief Officer of the Municipality, who was discharged from municipal service as a measure of retrenchment, is dismissed by the Second Class Sub-Judge, Pandharpur, on the ground that the word "retirement" occurring in section 58(h) of the B. M.B.Act, 1925 certainly includes compulsory discharge or retirement as in the case of Mr. Yadgiri. This interpretation of section 58(h) given by the Sub-Judge is contrary to that given by the R.L.A. in his opinion No.3361 dated the 12th June 1936 and accepted by Govt. The papers have been submitted to Govt. for orders on the decision of the Second Class Sub-Judge, Pandharpur. The Administrator, with whom the Commissioner agrees, considers that no useful purpose would be served by going in appeal. The U.S., G.D. also is not in favour of an appeal.

Id/- M.V. Pathavadkar.
8/2/

S.A.S.

A.The time for appeal having already expired the question of the advisability of appealing does not arise. A

Id/-R.T.K. 9/2/

A.L.R.

Id/-R.S.H. 9/2/

R.L.A.

Id/-P.N.H. 12/2/45.

U.R. to G.D. No. 1327 dt. 14th February 1945.

B.K.S. 14/5/ 40.

Office of the R.L.A.

The decision of the Civil Judge (Junior Division), Pandharpur in the Mudgiri case is not free from doubt and cannot be considered as an authoritative interpretation of section 58(h) of the Bombay Municipal Boroughs Act, 1925. Since however that decision is in accord with the intention of Government and appears to be valid in equity, it may be followed until there is a contrary decision of the High Court.

Sd/-P.K.N. 13/8/45
Remembrancer of Legal Affairs.

U.R. to G.D. No. 6036 dated the 14th August 1945.

B.K.B. 14/8/ 45.

L.D.B.I.No.1585/45 dated 20-2-45.

Submitted.

Please see the S.D.O.'s office note dated 14th February 1945, at pages 11-12 ante and the Collr's order at pages 5-6 ante. The facts have been stated fully in the Collr's order. The material dates are as follows :-

1) Mr. Tarachand was marked absent in the meeting held on 26th August 1943 and the next meeting he attended was held on 10th January 1944 (perhaps the date given in Collr's order may be wrong and the date may be 11th January 1944, but the discrepancy does not matter).

2) On 23rd ~~xxx~~ December 1943, Mr. Tarachand gave an application requesting leave from 15th November 1943 to 15th January 1944.

3) The application came up before the General meeting held on 11th January 1944 which was attended by Tarachand and the leave was sanctioned.

The Collr. held that Mr. Tarachand was absent from the meetings held during the period of four months 26th August 1943 to 25 December 1943 and hence he is disqualified. He further held that the leave which was granted by the Municipality on 11th January 1944 with retrospective effect was ultra vires. The Councillor in his appeal to the Government contends that the Collr's view is wrong and that the Municipality can grant leave with retrospective effect. The question involved in this reference is therefore whether the Municipality can grant leave without retrospective effect.

B.R.S. 14/5/ 4c.

Office of the [illegible]

The attention of [illegible] is invited to the L.I.[illegible]'s Opinion No.1565 dated 20-[illegible]-1942 and that Department is informed that the view taken by the Collector of East Khandesh in his order at p. 5 ante is correct.

Sd/-[illegible], 19/3/45
Memorandum of Legal Affairs.

U.R. to [illegible] No. [illegible]5 dated the 22nd March 1945.

B.K.S. 14/5/ 4c.

The view taken by G.D. in para. 4 of its office note at p.9 ante is correct. Further in the case of a municipality superseded under rule 38B of the Defence of India Rules no rule providing for delegation of power is now necessary (see proviso to cl.(b) of rule 38B(2) of the Defence of India Rules inserted by D.D. Notification No. 5-D.C(63)/44 dated 29-4-1944). A

Id/-..... 14/4/

A.L.M.

I agree. Reply may be as suggested.

Id/-R.J.M. 19/4/

R.L.A. Id/-P.M.M.
28/4/45.

U.R. to G.D.No.3437 dt. 2nd May 1945.

B.K.S. 14/5/ 4c.

Office of the R.L.A.

As pointed out by the A.L.A. in his opinion No.7327 dated the 20th August 1941 the retiring President of the Gadag Municipality is the proper authority who can now call a meeting for the election of a new President and Vice-President; and since he has defaulted, it is open to the Councillors to send a requisition to the President to call a special general meeting for the purpose and if the President fails so to do within the prescribed time, the Vice-President can call such meeting under section 35(2) of the Bombay Municipal Boroughs Act. If both of them default, the only feasible course would then be either to force the President by a mandamus from the court to call a meeting or to cajole him into so doing, because no empty threat of his removal by a vote of non-confidence under section 21 would be effective when no such resolution can be passed unless a meeting is called by the President. The Bombay Municipal Boroughs Act requires to be immediately amended to meet such cases.

Id/-P.N.M. 20/6/45
Remembrancer of Legal Affairs.

U.R. to J.D. No.4639 dated 20th June 1945.

B.K.D. 14/5/ 4c.

L.D.a.I.No.3671/26-1-45.

Submitted with reference to the P.W.D. note at p.30 ante.

2. The Govt. of Bombay had elected under the Indian Electricity Act, 1910, to purchase the undertaking of the Hubli Electricity, Ltd. Pending the settlement of price and completion of purchase, the Govt. had thought it expedient to pass an Order under Rule 81(3) of the Defence of India Rules to authorise Mr. N.C.Raghavan, Dy. Engineer, to exercise such effective control as to keep the said undertaking in efficient working order consistent with the provisions of the Indian Electricity Act. In this connection the R.L.A. in his opinion No.8094, dated the 16th November 1944 has held, 'If the duties of Mr. N.C.Raghavan are confined to seeing that the undertaking is kept in efficient working order, it cannot be said that either the ownership or the management of the Company has passed to Govt..... under these circumstances the question of giving notice by Govt. under sec. 87(1) of B.M.B.Act, 1925, does not arise as the transaction of purchase has not been completed and the property of the Company has not been transferred to Govt.". And therefore "So long as day to day management continues with the Company subject to the control of Mr. Raghavan, the Company will continue to be liable to pay all taxes in respect of the buildings". Afterwards the matter was discussed by the Electrical Engineer to Govt. and the Solicitors to Govt. with the R.L.A. where upon the R.L.A. agreed that Govt. should instruct Mr. Raghavan to pay up the Municipal taxes, which have accrued since the undertaking has come under his control with a clear statement to the effect that the said payment is made by him as Dy.Engineer in charge of the undertaking and without prejudice to Govt's right in the matter. This was confirmed by R.L.A's No. 1140, dated the 7th February 1945. Accordingly, the amount of Rs.786-6-2 on account of Municipal taxes accrued for the period since Govt. took over certain buildings in the Power House Compound have been paid. But the Chief

Officer, Municipal Borough, Hubli, has communicated to the Dy. Engineer, Hubli, Electric Supply, K.E.D. that their tax being yearly tax, payable in advance, it will have to be paid in full for the year and not from the date of taking possession of the property. The Electrical Engineer appears to be in favour of paying the balance of the taxes in which case, he states, the additional amount paid to the Municipality will be adjusted at the time of payment of the valuation amount to the Hubli Electricity Co. Ltd. According to the P.W.D. note this view seems to be correct. The K.E.A. is requested to advice.

B.K.D. 14/5/ 40.

Office of the A.L.A.

Under section 112 of the Bombay Municipal Boroughs Act, 1925 all municipal taxes levied in the form of a rate on lands or buildings or both are a charge upon the building or land in respect of which they are leviable. Consequently there is no legal objection to the course proposed by the Electrical Engineer to Government in his letter at page 2[illegible] ante.

Sd/-P.N. 19/6/45
Remembrancer of Legal Affairs.

U.N. to P.W.D., No. 4607 , dated the 20th June 1945.

B.A.S. 14/6/45.

Office of the R.L.A.

It is true as pointed out by the District Government Pleader, Ahmedabad, in paras. 2 to 4 of his opinion at page 9 ante that the rental value of the R.C. Technical Institute buildings appears to have been wrongly assessed under rule 244(5) instead of under rule 244(4) of the Ahmedabad Municipal Rules; but after the objections were overruled by the appellate committee under section 81(3) of the Bombay Municipal Boroughs Act, 1925, the Principal of the R.C. Technical Institute could have appealed under section 110 within fifteen days next after service of the notice of demand and in the event of an adverse decision the matter could have been taken in revision even to the High Court under section 111. It appears that no such steps were taken and the period of fifteen days prescribed in section 110 has now expired. If so, the only course open to Government would be to file a suit (see Bhopabeth v. Bhat 42 B.L.R.223).

2. In view of Article 149 of the Limitation Act which prescribes a period of sixty years for a suit by or on behalf of Government, section 206 of the Bombay Municipal Boroughs Act which prescribes a period of six months for a suit against a Municipality will not apply in the present case. Even assuming that section 206 does apply, the period of limitationwill have to be computed from the date of the service of notice of demand and not from the date of the order of the appellate committee under section 81(3); and in so computing, the period of notice can be excluded (see section 15(2) of the Indian Limitation Act). If Government desires to file a suit, early steps may be taken for the purpose.

Id. A.H.M.
28/7/45
Remembrancer of Legal Affairs.

U.K. to P.W.D. No. 5619, dated the 30th July, 1945.

The first contention of Mr. Koti that section 19[illegible] read with section 23(2) of the Bombay Municipal Boroughs Act can be invoked to convene a meeting for electing a new President is not valid. Section 23(2) provides that the provisions of section 1[illegible] shall be applicable so far as may be to the calling of a meeting and the procedure to be followed at such meeting for the election of a President under sub-section (1); and that sub-section (1) does not provide for the filling up of a vacancy in the event of the expiry of the term of office of a President appointed for a period less than three years under section 19(1), as in the present case, consequently section 9[illegible] cannot be resorted to.

2. Mr. Koti's second contention is that no writ of mandamus can be asked for in the present case as power to grant such writ vests only in the High Court in exercise of its original jurisdiction under section 45 of the Specific Relief Act. In Administrator, ~~Municipality~~ Lahore Municipality v. Munir-ud-Din (22 Lahore 279) Din Mohammad J. has observed at page 305 :-

> "Some courts have taken the view that there is no power in a court of law to issue a mandamus to any local authority beyond section 45 of the Specific Relief Act. With all respect to learned judges who have advanced that opinion I am inclined to think that section 55 is independent of section 45 and that the extra-ordinary jurisdiction vested in the High Courts of Judicature at Calcutta, Madras and Bombay does not in any way affect the jurisdiction vested in the civil courts in general by virtue of section 55 to issue mandatory injunctions to compel the performance of certain acts which the courts are capable of enforcing. In this connection I respectfully approve ~~of~~ of the remarks made in ~~the~~ Strachey v. Municipal Board of Cawnpore where it was explained that the remedy provided in section 45 was in the nature of a summary remedy and in no way interfered with regular suits. If injuctions cannot be issued to restrain public bodies from conducting themselves in an objectionable or illegal manner, the result would be that the aggrieved party would be left without a remedy even if his legal rights were trampled under foot and that could not be the intention of the ~~Legis~~ legislature.

3. It would therefore be open either to Mr. Koti or any councillor to file a suit in the Court of the Civil Judge (Junior Division) for

a mandatory injunction under section 55 of the Specific Relief Act requiring the President or Vice-President to call a special general meeting for the election of a new President in obedience to the requisition given under section 35(2) of the Bombay Municipal Boroughs Act.

4. The councillors who have been urging Government to take action have unnecessarily wasted much valuable time. Had they taken prompt action by filing a suit, they would probably have gained their point by now. It is however not too late for them to take this step if they so desire.

Id/- K.M.M.
26/7/45
Remembrancer of Legal Affairs.

U.O. to G.B.No. 5605, dated 30th July 1945

B.K.S. 14/5/ 40.

6447 dated 31-7-1945.

Submitted with reference to P. . note dated 5-7-1945 (p.49 ante).

2. The P.D. has decided to issue orders at pages 39-40 ante, regarding introduction of bill system for recovery of non-agricultural assessment in Surat City, by the appointment of one clerk and one peon as there in stated. Para. 2 of the proposed G.I., provides for the recovery of half the revised total cost of the City Survey maintenance and recovery staff, namely Rs.4[illegible]-3-6 from the Surat Municipality. Presumably the L.S.R. has been asked to see these orders with reference to para. 2 referred to above, with reference to G.L.A's opinion No.4690, dated 15-5-1940 at p.139 of G.L.A's Vol. O.I.[illegible]com./1940. (below).

R.A.G's office.

Seen and returned .

Sd/-P.N.K.

A.P. .

U.H. to R.D.No. 6379 dt. 2[illegible]-8-1945.

B.h.s. 14/5/ 4c.

Office of the A.I.A.

Section 104 (1) in Chapter VIII of the Bombay Municipal Boroughs Act, 1925 inter alia provides that as when any amount,

(a) which by or under the provisions of this Act is declared to be recoverable in the manner provided by this Chapter, shall have become due, the Chief Officer shall, with the least practicable delay, cause to be presented to any person liable for the payment thereof a bill for the sum claimed as due.

Section 74 (1) does not declare that the sum ascertained in the manner provided in sub-sections (2) and (3) to be recoverable in the manner provided in Chapter VIII. Consequently neither section 105 nor section 112 in Chapter VIII will be apply to the recovery of any sum due from Government under section 74 (1). It is presumed from the letter of the Superintending Engineer at p.13 ante that the tax due from Government in respect of "eastern Bungalow" at Shamburda represents a sum ascertained under section 74 (1). If so, the relevent provision is Article 120 of the Limitation Act, which provides a period of six years (see Whitaley's Limitation Act p.1602). Government would therefore be liable to pay taxes due within the last six years only. The view taken by the District Government Pleader, vide at p.11 ante does not appear to be correct.

Sd/-I.N.M. 29/8/45
Remembrancer of Legal Affairs.

U.R. to H.S.D. No. 6433 dated the 30th August 1945.

B.R.V. 14/5/ 40.

Office of the A.L.A.

The Ahmedabad Municipality was superseded by virtue of the powers conferred by sub-rule (1) of rule 3[illegible] of the Defence of India Rules for a period of six months with effect from 2nd August 1943 and an Administrator was appointed to exercise and perform the powers and duties of the superseded Municipality. The period of supersession was from time to time extended upto 31st March 1944. Since during the period of supersession the Chief Officer and other officers of the Municipality exercised certain powers under the Bombay Municipal Boroughs Act, 1925, without any valid delegation, Government had to pass Act XVII of 1944 to validate all their acts.

2. On 2nd October 1943 Government in exercise of the powers conferred by clause (b) of sub-rule (3) of rule 3[illegible]-B of the Defence of India Rules read with the proviso to the said sub-rule (3) directed that the Municipality shall be reconstituted with effect from 1st April 1944 in the manner provided for its reconstitution under the Bombay Municipal Boroughs Act, 1925. General elections were held and the Municipality was reconstituted with effect from 1st April 1944. The Municipality at a special general meeting held on 13th April 1944 passed a resolution that the Municipality, inclusive of its President and Vice-President shall cease to function forthwith. Since the resolution made it impossible for the Municipality to perform the duties imposed on it Government superseded the Municipality for a period of three years under section 319 of the Bombay Municipal Boroughs Act, 1925. The Commissioner appointed a Committee of Management with Diwan Bahadur Moulvi as its Chairman to exercise the powers and perform the duties of the superseded Municipality. The Committee of Management passed two resolutions empowering Diwan Bahadur Moulvi.

(1) to sue and be used on behalf of the Committee and

(2) to exercise and perform all powers and duties of the Municipal President under the Act.

It appears that Diwan Bahadur Moulvi is a paid Chairman and his salary is met from Municipal funds.

The questions raised for consideration of the M.L.A. are :-

(a) whether Act XVII of 1944 validating the acts done by the Chief Officer and other officers of the Municipality during the period of supersession of the Municipality under rule 4(1)-B of the Defence of India Rules was legally enacted,

(b) whether the supersession of the Municipality under section 41) of the Bombay Municipal Boroughs Act was illegal by reason of the failure on the part of Government to give the Municipality an opportunity to render an explanation as required by section 219(1) of the Bombay Municipal Boroughs Act,

(c) (i) whether the appointment of the Committee of Management and of Diwan Bahadur Moulvi as its Chairman is valid,

(ii) whether Diwan Bahadur Moulvi's appointment as a paid Chairman is legal,

(iii) whether his powers under delegated authority to sign vakalatnama is valid, and

(d) whether the Committee of Management can delegate its powers to an individual or a committee or a sub-committee under section 219(2)(b) and (d).

4. Question (a) :- The question which arises for consideration is whether the proper authority for undertaking validating legislation was the Government of India or the Provincial Government. The powers exercised by the Chief Officer and other officers of the Municipality without any validation during the period of supersession under rule 4-B of the Defence of India Rules were clearly illegal. They were exercised on the mistaken assumption that they were formalities under certain provisions of the Bombay Municipal Boroughs Act. Those powers

could not however be legally exercised unless they were validly delegated under the Act. It was therefore found necessary to validate them and that could only be done by amendment of the Bombay Municipal Boroughs Act. Legislation immediately affecting the constitution and powers of a municipal corporation falls within the Provincial field. Consequently, it was the Provincial Government alone which was competent to legislate in the matter. The Validating Act XVII of 1947 is therefore intra vires.

Question (b):- Section 71 (1) of the Bombay Municipal Boroughs Act, 1925 provides:

> If, in the opinion of the Provincial Government, a municipality is not competent to perform or persistently makes default in the performance of, the duties imposed on it by or under the Act, or otherwise by law, exceeds or abuses its powers, the Provincial Government may, after giving the municipality an opportunity to render an explanation, by an order published, with the reasons therefor, in the Official Gazette declare the municipality to be incompetent or in default, or to have exceeded, or abused its powers as the case may be and may dissolve such municipality or supersede it for a period to be specified in the order."

It appears from the language of section 71(1) that the giving of an opportunity to render an explanation is a condition precedent to dissolution or supersession. It is true that in the present case no opportunity was given to the Municipality to render an explanation, but that was because the Municipality by its resolution had committed hara-kiri and ceased to function and it was impossible for Government to call upon a body which was no longer competent to perform the duties imposed on it to render an explanation. In such cases, the provision or conditions dispensed with when compliance is impossible in the nature of things.

It would seem to be sometimes equally so where compliance was, though not impossible in this sense, yet impracticable, without any default on the part of the person on whom the duty was thrown. (See Maxwell on the Interpretation of Statutes, page 335). If the resolution passed by the General Board on 13th April 1944 is carefully scrutinised, it would be impossible to escape the conclusion that the body had definitely decided to cease functioning. A corporation acts through its Board and if the Board refuses to function the corporation would be deemed to be refusing to function. Consequently, when the Ahmedabad Municipality passed a resolution declaring its intention not to function any longer there was no one in authority whom Government could call upon to tender an explanation before passing the order of supersession under section 219(1) of the Bombay Municipal Boroughs Act. By passing the resolution the Municipality had definitely ceased to function; it was an unequivocal expression of its incompetence to perform its duties under the Act. Section 219 has been specially enacted to enable Government to take speedy action and continue the administration in the event of a deadlock like the one created by the Municipality in the present case. Consequently it was impracticable, if not impossible, to give the Municipality an opportunity to render an explanation. The principle stated by Maxwell would therefore apply to the present case and non-compliance with the condition mentioned in section 219(1) of the Bombay Municipal Boroughs Act cannot be considered fatal to the validity of the order of supersession.

Question (c)- Clause (b) of section 219 (1) of the Bombay Municipal Boroughs Act provides that when the Municipality is dissolved or superseded, all powers and duties of the Municipality shall, during the period of dissolution or supersession, be exercised and performed by such person or persons as the Commissioner from time to time may appoint in this behalf. "Person" as defined in section 3(39) of the Bombay General Clauses Act includes "any company or association or body of individuals whether incorporated or not". It was therefore competent for the Commissioner,

B.K.-

N.D. to appoint a committee of management consisting of 12 persons.

In constituting that committee it was also competent for the commissioner to nominate a person to preside at the meetings of the committee, since it is essential that the committee should have a presiding officer (see Halsbury's Vol. ... p.57), further clause (c) of section 219(2) lays down that all property vesting in the municipality shall, during the period of its resolution or dissolution, vest in His Majesty. Consequently, during the period of suspension the municipal fund vested in Government and it was competent for the commissioner to provide for payment to Diwan Bahadur Moulvi out of the municipal fund vesting in Government. Such payment could by no stretch of imagination be considered a misuse of the fund.

Clause (c) of section 219(2) provides that when two or more persons are appointed under clause (b) they may sue or be sued by any one of them who has been duly authorised to to sue and be sued on behalf of the rest by a resolution ~~&~~ duly passed by them in this ~~&~~ behalf of the rest by a resolution duly passed by them in this behalf. In pursuance ofthis provision a resolution was passed by the committee empowering Diwan Bhadur Moulvi to sue and be sued on behalf of the 12 members of the committee. Consequently, the power to sign vakalatnamas on behalf of the municipality rightly vests in Diwan Bahadur Moulvi.

Question (d):- Clause (d) of section 219(2), provides that the person or persons appointed under clause (b) may delegate his or their powers and duties to an individual or to a committee or sub-committee. Since, as already observed, the word person includes a committee incorporated or unincorporated there can be no objection to. the committee delegating its powers and duties to any member of the committee or to any sub-committee.

The Municipality need not be charged any fees for this opinion.

B.A.V.

Id/—.B.M.
16/C/.
...ster of ...rnal ...fairs.

U.K. to ...L.No. 5995 dated the ... th ...ugust, 1945.

B.—.V. 14/5/
4 c.

47 to 57 No. 6936.

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 21st September 1945.

From

I.H. Qureshi, Esquire, Bar-at-Law, I.C.S.,
Remembrancer of Legal Affairs,

To

The Surgeon-General with the Government of Bombay,
Bombay No.1.

Subject: Water tax.
Mental and Civil Hospital, Dharwar.

Sir,

With reference to your letter No...1049 dated the 7th April 1945. on the subject noted above, I have the honour to observe as under:-

It appears that for a number of years the Dharwar Municipal Borough has levying a charge or hospital for the supply of water to the Mental and Civil Hospitals, Dharwar; but in 1943-44 the Chief Officer of the Municipality informed the Medical Officers-in-charge of those hospitals that though there were water connections of different dimensions, water tax could be recovered in the past only according to the rate applicable to 1" pipe and that the Municipality proposed to levy charges from 1943-44 on the basis of the number and size of the existing pipe connections. The question then arose for the consideration of the Govt., whether the claim of the Dharwar Municipality is valid.

It appears clear from the letter of the Collector, Dharwar, No.RUB/L.709 dated the 24th July 1944, addressed to the Civil Surgeon, Dharwar, that some new pipe connections were laid in the Civil and Mental Hospitals, Dharwar, without the knowledge of the Municipality or of its officers. Although it is not clear when the new pipe connections were laid, it is not disputed that they have been in existence since 1943. Government would therefore be liable to pay water charges on the basis of the number and size of these connections. The charges will have to be calculated according to the rates in

D.X.J. 15/5/ &c.

force since 1943-44. No point of law is involved and there can be no difficulty in assessing the water charges accordingly.

2. The correspondence file is returned herewith.

Your obedient servant,

sd/-[illegible] 20/9/45
Remembrancer or Legal Affairs.

B.K.S. 15/5/ 4c.

7591 dated 3.9.1945.

Submitted with reference to G.D. note dated 30.8.1
(pages 55-56 ante).

*Papers in O. Provisional file/45 (in Poona).

2. Please see G.D. office note dated 13.7.1945 at pages 23-25 ante. In H.L.A's No. 5649, dated 31.7.1945 at p. 27 ante, the G.D, was requested to furnish this office with copies of the judgments of the trial court the District Court in appeal, for perusal in order to advise the G.D. on the point raised at A in G.D. note at p. 24 ante, as to whether the meeting for the election of the new President and Vice-President of the Sholapur Municipality ~~mx~~ after the life of the said body is extended under s. 25 of the Bombay Municipal Boroughs Act 1925 for one year from 14-4- 1945 will have to be ~~xx~~ called by the outgoing President under s. 35 of the said Act.

Sd/-P.N.M.
26/9/45

Office of the H.L.A.

Seen and returned.

Sd/-P.N.M. 22/9/45
Remembrancer of Legal Affairs.

U. K. to G.D.No. 7173 , dated the 28th September 1945.

J.K,J. 15/5/ 4c.

Office of the R.L.A.

The attention of the Home Department is invited to the R.L.A.'s opinion No. 2366 dated 21st April 1936, where the question with respect to the erection and maintenance of traffic signals, special lights and traffic islands in the city of Bombay was considered. In that opinion the R.L.A. observed:

> "They (traffic signals; special lights and traffic islands) are far more essential than e.g. trees planted along the streets on which expenditure is made exclusively by the corporation. I could regard these as coming within the expression 'improvement of public streets ... In my opinion the principle underlying the putting up of traffic islands and round abouts in streets is not dissimilar to that underlying the setting up of fences and posts for the safety of passengers: the safety of passengers, it may be noted, is a matter with which the police also are concerned (see clauses (f) and (g) of section 22, sub-section (2) of section 23, Bombay City Police Act, — 1902.). The police have no authority to erect or set up traffic signals, traffic islands etc. on streets which vest in the — corporation or to undertake financial responsibilities in that connection. In a matter like this there should be close — cooperation between the corporation and the Commissioner of Police or it would not be improper for Government to contribute a share of the costs incurred in this connection".

Subsequent to that opinion the Motor Vehicles Act, 1939, was passed. Section 75(1) of that Act, provides that the — Provincial Government or any authority authorised in this — behalf by the Provincial Government may cause or permit the traffic signs to be placed or erected in any public place for the purpose of regulating motor vehicles. By Government Resolution (Home Department) No.4795/4, dated the 27th August 1941, Government decided that the mandatory road signs in Part A of the ninth Schedule of the Motor Vehicles Act, 1939, should be erected at Government expense on all roads including those in charge of local authorities and that the erection of cautionary signs in Part B of that Schedule on roads in their charge should be left to the discretion of the local authorities concerned. It is not known whether the traffic signs which the Poona City Municipality is willing to erect at its own expense, though repudiating its liability to maintain them, are mandatory road signs or cautionary

signs or both; but after having once admitted its liability under section 75(1) of the Motor Vehicles Act, it would be unwise for Government to insist that the Poona City Municipality which has volunteered to bear the expenses of erecting the traffic signs should also maintain them.

The question of traffic islands appears to stand on a somewhat different footing. They improve the use of the road inasmuch as they not only facilitate the smooth flow of traffic but also ensure the safety of vehicles and pedestrains at important crossings. Section 114(1) of the Bombay Municipal Boroughs Act 1925 (which is the Act relevant to the facts of the present case) provides inter alia that it shall be lawful for a ~~xxxxx~~ Municipality to widen, open, enlarge or otherwise improve any public street. Since the provisions of this section are not obligatory the Municipality cannot be compelled to set up traffic islands. But when such traffic islands are set up by the Municipality they vest in the Municipality and automatically come under its management and control. That being so it is up to the Municipality to maintain the traffic islands from its funds under section 66. Since however traffic islands are also important from the point of view of regulation of traffic and effect a saving in the employment of policemen on point duty it might not be out of place for Government in a spirit of cooperation to contribute towards the costs of maintenance.

Sd/-P.M.M. 12/10/45.
Remembrancer of Legal Affairs.

U.O. to H. D.No. 7613 , dated the 15th October 1945.

D.K.J. 5/5/ 46.

R.I.No.6581,
dt. 3.10.45.

Submitted.

2. Please see F.D.(Supply) office note at p.21 ante. It appears that almost since the inception of the price control Govt. has encouraged non-official agencies to undertake distribution of essential commodities such as, cereal & grains, sugar, kerosene etc., by starting 'Fair Price Shops' of the above commodities. The encouragement from Govt. was either by way of loan, or by supply of the goods and commission, and mostly this work was taken up by various municipalities and local boards, some of them have made good profits out of these shops. The question now being considered is whether Govt. can legally have any claim over th profits, thus made by the muncys. and local boards. R.L.A. has been requested to give his opinion on the matter. (The views held by the different officers of F.D.(S). and the Examiner, of Local Audit Deptt. have been clearly stated in F.D. (Supply)'s above note).

B.R.S. 15/5/ 4c.

Office of the R.L.A.

Unless, at the time the Fair Price Shops were first opened, any conditions were laid down by Government as to the financing of those shops and the manner in which the profits were to be shared or utilised, it would not be legally feasible for Government to issue any valid directions to the Municipalities as to how the p ofits of the shops conducted by them should be utilised.

Sd/-P.N.M. 7/11/45
Remembrancer of Legal Affairs.

U.P. to F.P.(-.) No. G 90 dated the 8th November 1945.

B.K.D. 15/5/ 4c.

Office of the R.L.A.

Sub-section (2) of section 9 of the Bombay Municipal Boroughs Act, 1925 provides that any vacancy due to failure to elect the full number of councillors which under this section might be elected and any vacancy due to failure to elect a councillor under section 29 may, notwithstanding anything in this Act, be filled up by nomination by the Provincial Government. "The term 'election' may be defined broadly as the expression of a choice by the voters of a body politic. The term 'election' carries with it the idea of a choice in which all who are to be affected by the choice participate" (see Aiyangar's Law of Municipal Corporations in British India, p. 36). The right to choose their representatives vests in the voters and if that valuable right is not availed of by voters by failing to nominat a sufficient number of candidates or by nominating candidates who are disqualified or would later withdraw leaving an insufficient number of candidates to fill the seats, the constituency can be deemed to have failed to elect the full number of councillors within the meaning of section 9(2) of the Bombay Municipal Boroughs Act. Consequently the view taken by the Collector of Nasik in his letter at p. 23 ante is correct and there is no legal objection to Government filling up the vacancies by nomination under section 9(2): see rule 15(2) and (3) of the Election Rules of the Malegaon Municipality with regard to reserved seats.

Sd/- [illegible] 13/11/45
Remembrancer of Legal Affairs.

U.L. to G.D., No. 8458 , dated the 14th November 1945.

B.K.G. 15/5/ 4c.

Office of the R.L.A.

It is proposed to introduce the subsidised milk distribution scheme in the Poona Nationed Area comprising -

(i) the Poona City Borough Municipality,

(ii) the Poona Suburban Municipal Borough,

(iii) the Poona Cantonment, and

(iv) the Kirkee Cantonment.

The scheme is proposed to be worked through the agency of the said Municipalities and the Cantonments. For the working of the scheme it is proposed to appoint certain staff. The A.D.C.C. (Milk) in his note dated 6-12-1945 at page 1 ante observes that -

> "If according to the provisions of the Act (sections 34(1)(c) and 58(c) of the Bombay Municipal Boroughs Act, 1925, the appointment of the staff for the subsidised milk scheme is left to the general body of the Municipality it is unlikely that the general body will make the appointment in time to start the scheme from 1st January 1946 as contemplated by Government."

He considers that the appointments to be made in connection with the subsidised milk scheme are special appointments not covered by the rules made under clause (c) of section 58 and consequently the Chief Officer has full freedom to fill such appointment whatever the scales of pay attached to them. The R.L.A. is requested to advise whether the view of the A.D.C.C. is correct.

2. Clause (c) of section 58 of the Bombay Municipal Boroughs Act, 1925, provides that -

> A municipality shall make rules not inconsistent with this Act and may from time to time alter or rescind them determining the staff of officers and servants to be employed by the municipality and the respective designations, salaries, fees and absentee or other allowances of such officers and servants and their powers and duties."

Clause (c) of section 34(1) lays down that -

> "The Chief Officer shall subject to the provisions of sub-section (4), appoint to any post the monthly salary for which as fixed by rules made under clause (c) of section 58 does not exceed Rs.60/- and to any other post the appointment to which has not been otherwise provided for by such rules."

Reading these provisions together it will be clear that it is the Municipality which alone has the power to create posts by rules framed under clause (c) of section 58. The power to appoint to posts the salary of which does not

exceed Rs.50/- per month vests in the Chief Officer. The appointment to posts the salary of which exceeds Rs.50/- per month can be regulated by rules framed by the Municipality under clause (c) of section 50. But where no such rules are framed the power to appoint tosuch posts would, it seems, vest in the Chief Officer under section 74(c).

3. It appears from the F.D.(Supply) office note at page 3 ante that the posts are to be sanctioned by Government and wholly financed by it, but the persons appointed to the posts would be under the administrative control of the Municipality and subject to the rules and regulations of that body in regard to discipline, leave etc. It is presumed that the persons so appointed would be Municipal servants. If so, unless the posts are first created by the Municipality and the appointment to such posts as carry a salary of more than Rs.50/- per month is not regulated or provided for by the rules framed by the Municipality, the Chief Officer can have no power to appoint. The view taken by the A.D.C.S. in his note dated 6-12-1945 does not appear to be correct.

Sd/-P.N.M. 11/12/45
Remembrancer of Legal Affairs.

U.O. to F.D. (Supply), No. 9312 , dated 11-12-1945.

D.K.C. 15/5/ 46.

Office of the A.L.A.

Clauses (a) to (e) of rule 1 of the Rules for the levy of a general rate on buildings and lands framed by the Sholapur Municipality prescribe the rates on buildings and plots on the basis of the annual letting value, but clause (d) provides that in the case of mills and factories and buildings connected therewith the rates on buildings shall be levied at the ax rate of four rupees per 100 square feet or portion thereof for each storey, floor or cellar. The Consulting Surveyor considers that the levy of a rate on the basis of area as provided in clause (d) is not legal. The A.L.A. is requested to advise whether the view taken by the Consulting Surveyor is correct.

2. Section 73(i) of the Bombay Municipal Boroughs Act, 1925, empowers the Municipality to levy a rate on buildings or lands or both situate within the municipal borough. Under clause (iii) of section 75(a) the Municipality is required to frame rules specifying in the case of a rate on building or lands or both the basis for each class of the valuation on which such rate is to be imposed. Explanation to section 75 states that in the case of lands the basis of valuation may be either the capital or annual letting value. Section 76(1) provides for the preparation of an assessment list. Under clause (d) of that provision the valuation assessed on the basis of capital or annual letting value is required to be stated in the assessment list. It is clear from these provisions that a building or land is to be rated on the basis either of annual letting value or of capital value. Under clause (d) of rule 1 of the Rules for the levy of a general rate on buildings and lands the Sholapur Municipality provides for the levy of a rate onthe basis of area which appears to be unwarranted. The view taken by the Consulting Surveyor is correct.

sd/- [illegible] 27/12/48
Remembrancer of Legal Affairs.

L.A. to G.D., No. 9650 , dated the 28th December 1948.

B.A.-. 15/5
48.

It appears that in pursuance of a scheme relating to the release of vehicles for essential civil transport certain chassis were released under orders of the [illegible] for the districts of Madura, Ramnad, Tinnevelly and Pudukotta State and were delivered by Messrs. General Motors India Ltd., Bombay, to their agents T.V. Sundaram Iyengar & Sons Ltd., Madura. While the chassis were being driven from Bombay to Madura by road via Poona it appears that the Poona Municipality levied octroi duty on them. The legal position of these vehicles is stated by the Assistant Controller of Road Transport in his letter at p.13 of the file as follows.-

> As the vehicles are the property of Government and are held under trust and under certain obligations with the Government of the U.S.A. and as Government has right of resumption of the vehicles even after they are sold to the ultimate purchasers it is requested that the Government of Bombay be pleased to issue the necessary instructions to the Municipal authorities, Poona, to exempt vehicles from the levy of octroi duty and also to refund the sum already realised.

C.D. in its office note at page 13 ante observes:-

> The vehicles would be exempt from the duty under the provisions of the Municipal Acts only if it can be shown that they are used solely for public purposes and are not used or intended to be used for purposes profit. Lease/Land Vehicles are meant for sale to the public and it seems very doubtful whether the sale of these ex vehicles can be taken to be a public purpose within the meaning of the proviso (a) to section 59 of the Bombay District Municipal Act, 1901, and proviso (a) to section 73 of the Bombay Municipal Boroughs Act, 1925. It would seem reasonable to assume that Government derives some profit from the sale of the vehicles ..... If the above view is accepted the vehicles would not be exempt from the duty under the Municipal Acts if they are not exempt under the Municipal rules ..... As regards the point why the tax was levied by the Poona Municipality when the vehicles were not meant to be used within the Municipal area it may be noted that the only way in which a Municipality can make sure that the goods passing through the municipal limits are not to be used within the Municipal area is to levy the tax first and grant a refund later if the goods are exported."

The R.I.A. is requested to advise whether the Lease/Land vehicles passing through Poona or any other municipal limits would be exempt from the levy of octroi.

2. Every Municipality has its own octroi Rules and Regulations in the absence of which it is not possible

to determine the liability or otherwise of the Lease/ Lend vehicles to octroi. The question may therefore be limited to the present case namely the liability of the ~~xxxx~~ Lease/Lend chassis to octroi levied by the Poona Municipality.

3. Under section 154 of the Government of India Act, 1935, property vested in His Majesty for purposes of the Federation shall, save in so far as any Federal law may otherwise provide, be exempt from all taxes imposed by, or by any authority within, a Province or Federated State. Proviso thereto lays down that until any Federal law otherwise provides, any property so vested which was immediately before the commencement of Part III of this Act liable or treated as ~~xx~~ liable to any such tax shall so long as that continues, continue to be liable or to be treated as liable thereto. It appears from item 166A in the Schedule I to the Poona City Municipality's Octroi Rules and By-laws as amended under G.N., G.D.No. 291(64) dated 8-4-1939 chassis were made liable to ~~x~~ octroi ~~xxxxx~~ for the first ~~x~~ time in 1939. It follows that chassis of the Central Government were neither liable nor treated as liable to octroi before the commencement of Part III of the Government of India Act i.e. before 31st March 1937. Consequently if as stated by the Assistant Controller of Road Transport the chassis were the property of the Central Government, the chassis could not be liable to the levy of octroi by the Poona City Municipality and Messrs. A.V. Sundaram Iyengar & Sons Ltd. would be entitled to the refund thereof.

Sd/- [illegible] 27/12/4
Remembrancer of Legal Affairs.

U.O., to C.D., No. 9691, dated the 28th December 1945.

B.U.O. 15/5/ 46.